

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DAVID GRAYS,)	
)	
Petitioner,)	
)	
v.)	No. 4:07CV955 HEA
)	
DWAYNE KEMPKER,)	
)	
Respondent.)	

ORDER OF DISMISSAL

Having carefully reviewed petitioner's response to show cause [Doc. #14], the Court concludes that the instant action should be dismissed as time-barred under 28 U.S.C. § 2244(d)(1), as set forth in this Court's Order and Memorandum of June 7, 2007 [Doc. #6].¹

Accordingly,

IT IS HEREBY ORDERED that petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED**, without prejudice, as time-barred under 28 U.S.C. § 2244(d)(1).

IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel [Doc. #15], motion for leave to file an amended petition [Doc. #16], and motion for an evidentiary hearing [Doc. #17] are **DENIED** as moot.

¹Specifically, the Court finds no merit to petitioner's claim that equitable tolling is warranted in this case, because a state-created impediment exists in that there is "no adequate mechanism in Missouri's direct appeal process for an evidentiary hearing on claims of ineffective assistance of Appellate Counsel on matters outside of the appellate record."

IT IS FURTHER ORDERED that petitioner is **DENIED** a certificate of appealability if he appeals this order of dismissal.

Dated this 15th day of November, 2007.

A handwritten signature in cursive script, reading "Henry Edward Autrey", with a long horizontal flourish extending to the right.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE